

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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In the Matter of )

Wireless Telecommunications Bureau Seeks )  
Comment on The State of Mobile Wireless )  
Competition )

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WT Docket No. 11-186

**COMMENTS OF METROPCS COMMUNICATIONS, INC.**

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MetroPCS Communications, Inc. (“MetroPCS”),<sup>1</sup> by its attorneys, hereby respectfully submits its comments in response to the *Public Notice* of the Federal Communications Commission (the “FCC” or “Commission”) (the “*Notice*”) in the above-captioned proceeding on the state of mobile wireless competition.<sup>2</sup> The following is respectfully shown:

**I. INTRODUCTION AND SUMMARY**

The retail mobile wireless services marketplace is unquestionably competitive, with five to six retail facilities-based competitors and numerous mobile virtual network operators in most metropolitan areas. Mobile services continue to ignite an economic spark in a down economy, and the wireless industry should be commended for its continued investment and robust competition at the retail level. Contrary to the Commission’s findings in the prior two mobile wireless competition reports, MetroPCS submits that “effective competition” currently does exist in the retail wireless industry. Approximately 97.4 percent of the American population is

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<sup>1</sup> For purposes of these Comments, the term “MetroPCS” refers to MetroPCS Communications, Inc. and all of its FCC-licensed subsidiaries.

<sup>2</sup> *Wireless Telecommunications Bureau Seeks Comment on The State of Mobile Wireless Competition*, WT Docket No. 11-186 (rel. Nov. 3, 2011) ( the “*Notice*”).

covered by at least three mobile voice providers, and 94.3 percent of the population is covered by at least four mobile voice providers.<sup>3</sup> Nevertheless, due to the increasing dominance of the largest players in the marketplace, robust retail wireless competition may soon become imperiled. This risk is presented because the upstream market for mobile wireless services, such as access to spectrum, access to wireless handsets and access to wholesale, carrier-to-carrier wireless data roaming services, is considerably less competitive. These upstream competitive concerns require prompt Commission attention.

As wireless technology advances seemingly by the day, consumers increasingly rely on wireless services in their daily lives. The *Fifteenth Report* correctly found a rising trend of “wireless-only” households, and, as a result of this lifestyle, more and more consumers relied upon their mobile wireless devices exclusively for their voice services, and in some cases, for their primary and exclusive Internet services as well. This trend has continued and, based on MetroPCS’ experience, is continuing. Moreover, social media has intensified the use of wireless services since consumers are able to access the Internet anywhere, at any time, at speeds comparable to wireline networks. A significant percentage of MetroPCS’ customers are first-time wireless users who are low-income individuals with no other communications links. Many of these individuals would not have access to wireless service or Internet access without the affordable, flexible and predictable voice and data plans that MetroPCS offers.

In order for MetroPCS to continue bridging the broadband divide and meeting unsatisfied demands for wireless broadband services, the Commission must take certain targeted actions to promote competition in the areas of concern. The ability of consumers to participate in the

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<sup>3</sup> See *Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Fifteenth Report, WT Docket No. 10-133, ¶ 44 (June 27, 2011) (“*Fifteenth Report*”). This competitiveness must be nurtured by the Commission, as noted below, and should not be diminished by unconditioned consolidation.

wireless revolution at affordable prices is contingent on the ability of wireless providers to obtain access to various essential inputs. As the industry consolidates further, the ability of small, medium, and regional carriers to obtain these inputs will fade. Indeed, with the proposed AT&T/T-Mobile and AT&T Qualcomm transactions, and the recently proposed Verizon Wireless acquisition of SpectrumCo's AWS spectrum, further consolidation of the wireless marketplace continues to loom on the horizon, threatening the competitive future of the industry.

Commission action is required to preserve and promote competition in order for consumers to reap the benefits of wireless innovation. Access to critical inputs is in jeopardy for small, rural and mid-tier carriers, as these inputs becoming increasingly controlled by but a few carriers – a situation that would only worsen if the pending AT&T and Verizon transactions proceed without significant divestitures and meaningful conditions. First and foremost, small, rural and mid-tier carriers need spectrum in order to meet the increasing demands for wireless data services. As these demands increase, carriers will be increasingly unable to satisfy their customers' needs without additional spectrum. If the spectrum crunch is not addressed, the wireless industry will likely enter a third phase of significant consolidation.<sup>4</sup> The only way to prevent such consolidation is the allocation and auction of new spectrum.

The Commission must secure and fairly distribute additional spectrum in order to promote competition and innovation in the wireless market. MetroPCS recommends that the Commission give serious consideration to certain recent proposed spectrum pairings, most

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<sup>4</sup> In MetroPCS' view, there have been three distinct phases of mobile wireless consolidation: Phase 1: consolidation to enable carriers to provide wide-area and regional services; Phase 2: consolidation to enable carriers to establish nationwide footprints for voice service; and now Phase 3: consolidation to support nationwide data services.

notably, the proposal submitted by Ericsson.<sup>5</sup> Ericsson has proposed that the Commission pair the 1675-1710 MHz band with the 2075-2110 MHz band (AWS-4), and pair the 1755-1780 MHz band with the 2155-2180 MHz band (AWS-3). In addition to these beneficial spectrum pairings, the Commission must also conduct a meaningful inventory in order to find and allocate spectrum that is not being put to its highest and best use. Further, the Commission should promote prompt, sensible auction policies, such as MetroPCS' Broadband Incentive Discount Proposal.<sup>6</sup> This proposal would encourage market participants other than the major nationwide carriers to participate in the upcoming spectrum auctions, and increase their prospects of success.

Second, the disinclination of the nationwide carriers to enter into data roaming agreements, despite Commission efforts, continues to place small, rural and mid-tier carriers at a severe disadvantage in the marketplace, a situation that will only worsen over time without Commission action. Large, nationwide carriers have overwhelming market power with respect to data roaming services, and little, if any, competitive incentives to negotiate reasonable agreements. With the explosion of data consumption over wireless networks – a trend that shows no signs of abating – fair data roaming agreements are vital to ensure that small, rural and mid-tier carriers such as MetroPCS are able to compete effectively with larger rivals in the wireless marketplace.

Large carrier dominance also has interfered with the access of other carriers to advanced handsets. Exclusive handset agreements further introduce anti-competitive practices into the wireless ecosystem, and further shut out small, rural and mid-tier carriers from participating equally in the marketplace. Multiple studies have demonstrated that handsets play a critical role

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<sup>5</sup> Ericsson Ex Parte Notice, in ET Docket No. 10-142, WT Docket Nos. 04-356, 07-195 (filed Sept. 15, 2011).

<sup>6</sup> Comments of MetroPCS Communications, Inc., in WT Docket No. 10-133, 23 – 24 (filed Jul. 30, 2010) (“*MetroPCS 15<sup>th</sup> Wireless Competition Report Comments*”).

in a consumer's choice when it comes to wireless providers. Indeed, the Commission has recognized that mobile handsets and devices increasingly are central to the dynamics of the overall wireless market, and play an increasingly important role for consumers as a basis for choosing providers. Exclusive handset arrangements that restrict distribution of handsets to a single service provider result in unfair advantages for the larger, nationwide carriers who are able to gain even greater market power at an accelerating rate. A similar problem exists with the input of access to backhaul and infrastructure. The current demand for mobile wireless broadband has intensified the need for these backhaul resources while the market power of the largest carriers enables them to occupy the field. The Commission previously has recognized the critical role that backhaul and infrastructure play in the wireless ecosystem, and must implement policies that allow for greater access to, and a fair distribution of, these scarce resources.<sup>7</sup>

Finally, in seeking to fulfill its regulatory mandate, the Commission should be mindful of the significant hurdles faced by small, rural and mid-tier carriers, and only impose regulatory mandates on such carriers where necessary to promote competition and provide benefits to consumers. The Commission should refrain from imposing unnecessary regulations. For example, the Commission should not extend Part 4 outage reporting requirements and mandating cramming regulations on wireless providers. Such requirements, particularly on small, mid-tier, and regional carriers, will only have the effect of diverting critical resources from mobile broadband deployment.

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<sup>7</sup> MetroPCS also maintains that, in order to further such growth and innovation in the wireless market, Channel 51 interference problems and 700 MHz interoperability issues need to be promptly resolved by the Commission.



## **II. THE INTEREST OF METROPCS**

MetroPCS is a wireless-only communications company that offers wireless broadband mobile services on an affordable, flat-rate basis with no annual contract and predominantly unlimited usage. MetroPCS is the fifth-largest facilities-based wireless carrier, and owns or has access to licenses covering a population of approximately 142 million people. As of September 30, 2011, MetroPCS had approximately 9.1 million subscribers, had constructed networks covering approximately 100 million people and currently offers service in many of the largest metropolitan areas in the United States.

MetroPCS offers service plans that are differentiated simply by being more affordable, predictable and flexible than the more complex long-term plans offered by many of its competitors. MetroPCS allows customers to place and receive unlimited wireless calls in MetroPCS' coverage area, as well as in its extended service areas through various roaming arrangements, under its flat-rate monthly service plans. Customers pay for service in advance, without a credit check, with rate plans providing unlimited voice, text and data on a nationwide basis beginning as low as \$40 per month, which includes taxes and regulatory fees.

By offering such affordable plans, MetroPCS is introducing mobile wireless services to a segment of the population which has been largely bypassed by the wireless revolution. A significant percentage of MetroPCS' customers are first-time wireless users. Many of these subscribers use their MetroPCS wireless phone as their primary or exclusive means to access the Internet. In addition, a substantial number of MetroPCS' customers are "cutting the cord" and using their MetroPCS wireless phone as their primary or exclusive communications service. Finally, as MetroPCS has begun offering more robust data services, it has seen a significant increase in data usage, confirming the importance of its services in bridging the Internet divide.

MetroPCS consistently updates its services, products, and prices in order to keep up with the demands of the constantly changing technology in the wireless industry. Indeed, in September 2010, MetroPCS became the first mobile wireless provider to offer 4G LTE services in the United States. At the same time, MetroPCS launched the world's first dual mode CDMA/LTE handset, the Samsung Craft. Such innovative advancements in the past year have greatly contributed to the wireless industry's continued growth.

### **III. CHANGES IN THE WIRELESS INDUSTRY SINCE THE *FIFTEENTH REPORT***

As is set forth in detail below, significant wireless industry consolidation has been proposed since the *Fifteenth Report* which must be taken into consideration by the Commission. Also, the industry has been altered by the proliferation of “game changing” handsets. And, as data consumption continues to climb upwards, voice services have declined, resulting in service plans which are now focused on data usage, rather than voice usage. In addition, for various reasons discussed herein, former postpay customers increasingly are finding prepaid services more attractive, and carriers are offering more prepaid plans since the *Fifteenth Report*, thus increasing competition between the postpay and prepaid segments of the mobile wireless marketplace. These developments are discussed in separate subsections below.

#### **A. Proposed Consolidation**

The wireless industry has undergone a significant transformation since the Commission last sought input for its *Fifteenth Report*.<sup>8</sup> Further proposed consolidation of the wireless industry threatens the prospect that the benefits of competition will be enjoyed by consumers. In March 2011, AT&T announced its proposed merger with T-Mobile, on the heels of its proposed

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<sup>8</sup> *Wireless Telecommunications Bureau Seeks Comment on the State of Mobile Wireless Competition*, Public Notice, WT Docket No. 10-133, DA 10-1234 (rel. Jun. 30, 2010) (“*Fifteenth Notice*”).

acquisition of Qualcomm's spectrum, and on December 2, 2011, Verizon Wireless announced that it was acquiring SpectrumCo's 20 MHz of AWS spectrum, which covers nearly 260 million POPs.<sup>9</sup> If approved, these transactions will undoubtedly spur even further consolidation in the wireless industry. If these transactions proceed the two largest national carriers – AT&T/T-Mobile's post-merger entity, and Verizon – would have approximately 89 percent of the total industry EBITDA, over 70 percent of the industry's total service revenues, and over 70 percent of all subscribers of the industry, post-transactions.<sup>10</sup> In comparison, the combination of the five largest regional providers, including MetroPCS, represent approximately six percent of the industry's total subscribers and service revenues.<sup>11</sup> Further, the spectrum resource gulf between the largest carriers and the small, rural and mid-tier carriers will have widened further with AT&T and Verizon maintaining approximately 100 MHz of spectrum or more nationwide – and with smaller carriers averaging nearly 20 MHz of spectrum or less.

The AT&T/T-Mobile transaction has, of course, run into a number of obstacles. The Department of Justice ("DOJ") filed a lawsuit to stop the merger, citing violations of antitrust law.<sup>12</sup> In the Complaint filed against the applicants of the proposed merger, the DOJ concluded that the market for wireless services is national, and not local as it was previously considered to

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<sup>9</sup> *Commission Opens Docket for Proposed Transfer of Control of T-Mobile USA, Inc. and its Subsidiaries from Deutsche Telekom AG to AT&T Inc.*, Public Notice, WT Docket No. 11-65, DA 11-673 (rel. Apr. 14, 2011); *Verizon Wireless Buying SpectrumCo Licenses for \$3.6B*, FORBES, Dec. 2, 2011, available at <http://news.yahoo.com/verizon-wireless-buying-spectrumco-licenses-3-6b-141849670.html>.

<sup>10</sup> See FCC Staff Analysis and Findings on AT&T and T-Mobile Transaction, WT Docket No. 11-65, ¶ 37 (filed Nov. 29, 2011) ("*FCC Staff Analysis*"). Percentages represent standings as of year-end 2010.

<sup>11</sup> The five combined regional providers include: U.S. Cellular, C Spire, Leap Wireless, MetroPCS, and Alltel. See *FCC Staff Analysis* at ¶ 38. Percentages represent standings as of year-end 2010.

<sup>12</sup> See generally *United States of America v. AT&T et al.*, Case No. 1:11-cv-01560, Plaintiff Complaint (filed Aug. 31, 2011).

be.<sup>13</sup> The DOJ stated that “[b]ecause competitive decisions affecting technology, plans, prices, and device offerings are typically made at a national, rather than local, level, the rivals that affect those decisions generally are those with sufficient national scale and scope, i.e., the Big Four [AT&T, Verizon, Sprint, T-Mobile].”<sup>14</sup>

An FCC spokesman also has commented that the AT&T and T-Mobile transaction “would bring about the largest nationwide increase in wireless concentration in history,” and noted that “[t]he Commission has never really seen anything like the deal that’s been described in the record.”<sup>15</sup> Moreover, the Wireless Bureau recently released its Staff Analysis of the AT&T/T-Mobile transaction, which illustrates in detail the many competitive harms that may result from such a combination. These included stated concerns that the transaction would cause “increased likelihood of unilateral and coordinated effects,” and raise material questions of fact regarding the competitive effects of the transaction in the markets for roaming, backhaul, and handsets/devices.<sup>16</sup> Nevertheless, AT&T and T-Mobile still have not abandoned their merger transaction. As a consequence, the Commission must review its policies, which have largely focused on local competition, to consider whether the new national focus changes how the industry is regulated. MetroPCS discusses some recommendations to reflect the rapidly changing wireless marketplace later in these comments.

Moreover, Verizon Wireless recently announced its planned acquisition of SpectrumCo’s 20 MHz of nearly nationwide AWS spectrum. This transaction, if approved, would give Verizon

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<sup>13</sup> *Id.* at ¶ 19.

<sup>14</sup> *Id.*

<sup>15</sup> Brooks Boliek, *FCC move injects delays, uncertainty into AT&T/T-Mobile deal*, POLITICOPRO, Nov. 22, 2011, <https://www.politicopro.com/story/tech/?id=7496>; see also *FCC Staff Analysis* at ¶ 34 (discussing important national competitive characteristics of retail wireless services).

<sup>16</sup> *FCC Staff Analysis* at ¶ 13.

Wireless an even more significant spectrum position in relation to small, rural and mid-tier carriers. The transaction also would remove the cable companies as significant facilities-based competitors in the mobile wireless marketplace, since Comcast, Time Warner and Brighthouse Networks, each of which is a cable operator with significant resources, have long been viewed as the next major competitors in the provision of retail wireless services. Lastly, such a transaction would also remove potential suppliers of roaming services from the wholesale marketplace. This Verizon/SpectrumCo transaction, if approved without significant divestitures, would only enhance the ability of Verizon to control the critical inputs needed by other carriers to continue to provide competition in the retail mobile wireless marketplace.

**B. The Dominance and Importance of “Game Changing” Handsets have Continued to Impact The Wireless Industry**

Handsets continue to be one of the main considerations consumers take into account when selecting a wireless provider. Indeed, in its Staff Analysis, the Wireless Bureau found that handsets are playing “an increasingly important role for consumers as a basis for choosing providers.”<sup>17</sup> It is clear that handsets are at the forefront of the shifting wireless industry environment, and therefore act as a catalyst for resulting changes in usage type and service plans.

**i. Recent Actions Demonstrate the Importance of the iPhone to the Wireless Industry**

An influential “game changer” to the competitive atmosphere of the wireless industry was the release of the iPhone to carriers other than AT&T.<sup>18</sup> This year, both Verizon and Sprint

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<sup>17</sup> *FCC Staff Analysis* at ¶ 117.

<sup>18</sup> See e.g., Jenna Wortham, *Carrier Rivalry Sharpens as iPhone Comes to Sprint*, N.Y. TIMES BLOG, Oct. 4, 2011, <http://bits.blogs.nytimes.com/2011/10/04/carrier-rivalry-sharpens-as-iphone-comes-to-sprint/>; Jenna Wortham, *Verizon’s Bet on iPhone Brings a Slow Return*, N.Y. TIMES, Jul. 23, 2011, at B3, available at [http://www.nytimes.com/2011/07/23/technology/iphone-bolsters-verizon-results.html?\\_r=1](http://www.nytimes.com/2011/07/23/technology/iphone-bolsters-verizon-results.html?_r=1).

began to offer the iPhone to their customers, increasing subscribership for the two networks.<sup>19</sup> Verizon, in a brief attempt to distinguish itself from its competitors, temporarily offered an unlimited data plan for its subscribers, a plan that AT&T once offered but stopped, citing excessive demands on the network.<sup>20</sup> Building networks capable of handling, and then obtaining these cutting-edge handsets requires carriers to invest substantial funds and other resources. For example, Sprint paid Apple a significant amount of money for the right to carry the iPhone, demonstrating the lengths that a carrier is willing to go to obtain such a coveted handset.<sup>21</sup> However, the iPhone still remains unavailable to most wireless carriers. This limited availability restricts the ability of most smaller and regional carriers to offer comparable offerings to their nationwide counterparts.

**ii. The Surge in Consumer Acceptance of Android and Other Low-Cost Smartphones Has Played an Influential Role in the Wireless Industry**

Small, mid-tier and rural carriers who do not have access to the iPhone are forced to look to Android smartphones in order to satisfy customer demand and remain players in the retail wireless market. The popularity of smartphones in general has changed the game for all carriers.

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<sup>19</sup> See e.g., *iPhone helps Verizon rake in subscribers*, CRAIN'S NEW YORK, Apr. 21, 2011, <http://www.crainsnewyork.com/article/20110421/FREE/110429975> (stating that Verizon added 906,000 wireless subscribers around the time that it began offering the iPhone); Roger Cheng, *Sprint Loss narrows as customer growth doubles*, CNET, Oct. 26, 2011, [http://news.cnet.com/8301-1035\\_3-20125576-94/sprint-loss-narrows-as-customer-growth-doubles/](http://news.cnet.com/8301-1035_3-20125576-94/sprint-loss-narrows-as-customer-growth-doubles/) (noting that although it is too early to see the full results, Sprint has reported that the sales from the first two weeks of offering the iPhone “indicate it will break the record for percentages of buyers who are new customers.”).

<sup>20</sup> Jefferson Graham, *Verizon offers unlimited data plan for iPhone – for now*, USA TODAY, Jan. 26, 2011, [http://www.usatoday.com/tech/news/2011-01-25-verizon-iphone\\_N.htm](http://www.usatoday.com/tech/news/2011-01-25-verizon-iphone_N.htm)

<sup>21</sup> Larry Dignan, *Sprint's iPhone: Early pain, long-term gain?* CNET, Oct. 26, 2011, [http://news.cnet.com/8301-1035\\_3-20125762-94/sprints-iphone-early-pain-long-term-gain/](http://news.cnet.com/8301-1035_3-20125762-94/sprints-iphone-early-pain-long-term-gain/) (quoting Sprint's CEO as comparing the iPhone to an expensive baseball player who can fill the stands of a high-priced stadium).

The flip-phone, or feature phone, is now considered to be ancient technology and is going the way of the dinosaur. Consumers are coming to expect more from their phone than just voice calls; they want data services, cutting-edge technology, and the next best thing. Handsets now focus less on voice-only services, and more so on capabilities, such as storage, screen size, memory and processor speed.<sup>22</sup> With the price of certain Android phones dropping below \$100,<sup>23</sup> the time has finally arrived such that it is cost-effective for many more consumers to make the switch to a smartphone.

Handset prices have begun to follow the path of PC prices and are dropping every day due to the surge in acceptance of “non-iPhone” smartphones such as the Android.<sup>24</sup> This benefits consumers since lower handset prices lead to greater acceptance of advanced services, and puts pressure on carriers to innovate more in their service offerings. This increases competition and consumer choice. Since all carriers have access to Android phones, wireless service providers are being challenged to find new ways to distinguish themselves. This has led to rate plan innovations, such as tax inclusive plans and unlimited data plans. The Commission should foster robust competition in the handset market to ensure that innovation continues and prices continue

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<sup>22</sup>Don Kellogg, *In U.S. Market, New Smartphone Buyers Increasingly Embracing Android*, NIELSENWIRE, Sept. 26, 2011, [http://blog.nielsen.com/nielsenwire/online\\_mobile/in-u-s-market-new-smartphone-buyers-increasingly-embracing-android/](http://blog.nielsen.com/nielsenwire/online_mobile/in-u-s-market-new-smartphone-buyers-increasingly-embracing-android/) (stating that “[w]hile 43 percent of all mobile subscribers in the US had a smartphone as of August, 56 percent of those who got a new device in the last 3 months chose a smartphone over a feature phone.”).

<sup>23</sup> See e.g., Athima Chansanchai, *4G Android Phone for under \$100*, MSNBC.COM, Sept. 19, 2011, <http://gadgetbox.msnbc.msn.com/news/2011/09/19/7840866-4g-android-phone-for-under-100>.

<sup>24</sup> According to a Nielsen survey, as of August 2011, 43 percent of all smartphone owners had an Android phone. Don Kellogg, *In U.S. Market, New Smartphone Buyers Increasingly Embracing Android*, NIELSENWIRE, Sept. 26, 2011, [http://blog.nielsen.com/nielsenwire/online\\_mobile/in-u-s-market-new-smartphone-buyers-increasingly-embracing-android/](http://blog.nielsen.com/nielsenwire/online_mobile/in-u-s-market-new-smartphone-buyers-increasingly-embracing-android/); see also Matt Peckham, *Nielsen: Android Popularity Outpaced iOS in August*, TIME: TECHLAND, Sept. 27, 2011, <http://techland.time.com/2011/09/27/nielsen-android-popularity-outpaced-ios-in-august/>.

to be competitive, which will force carriers to continue to pass along such innovation and competitive pricing to consumers. This will result in more Americans being able to afford wireless broadband services and joining the wireless data revolution.

**C. Voice Services are Decreasing in Popularity Due to the Explosion of Mobile Data Consumption**

The emergence of affordable smartphones has also changed the way that consumers use their phones. Voice usage has been decreasing, resulting in lower voice revenues for providers, and, as a result, service plans are now focusing on data usage. Texting, or SMS messaging, is increasing rapidly in popularity and may have become “the new voice of the customer.”<sup>25</sup> A recent study commissioned by the Pew Internet and American Life Project found that 31 percent of American adults prefer texting, while “the rate of texting for 18-to 24-year-olds is ‘more than double the comparable figure for 25-34 year old, and 23 times the figure for text messaging users who are 65 or older.’”<sup>26</sup> These disparities clearly indicate that the focus on text messaging is certain to increase with the passage of time as new generations of users join the wireless customer base. As a result, wireless providers also have begun to offer an increasing amount of unlimited messaging plans, in addition to unlimited calling plans, in order to keep customers satisfied.<sup>27</sup>

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<sup>25</sup> *Texting: the New Voice of the Customer*, PRNEWswire, July 12, 2011, <http://www.prnewswire.com/news-releases/texting-the-new-voice-of-the-customer-125403733.html>.

<sup>26</sup> Amy Gahrn, *One-third of Americans prefer texts to voice calls*, CNN, Sept. 22, 2011, <http://www.cnn.com/2011/09/22/tech/mobile/americans-prefer-text-messages/index.html>; See also PEW INTERNET AND AMERICAN LIFE PROJECT, AMERICANS AND TEXT MESSAGING (2011) available at: <http://pewinternet.org/Reports/2011/Cell-Phone-Texting-2011.aspx>.

<sup>27</sup> See Kent German, *Verizon adds \$50 unlimited prepaid plan*, CNET, Apr. 27, 2011, [http://www.cnet.com/8301-17918\\_1-20058005-85.html](http://www.cnet.com/8301-17918_1-20058005-85.html) (describing the prepaid plans of MetroPCS, Cricket Wireless and Boost Mobile which all include unlimited calling and messaging).



As noted earlier, the emergence of smartphones and tablets also accelerates the move to data services over voice services in wireless plans.<sup>28</sup> T-Mobile, for example, has begun to partner with Wal-Mart to distribute prepaid phone service plans that focus heavily on data, with up to 5 GB of mobile broadband service at 4G speeds and no limit on text messages.<sup>29</sup> Notably, this plan only offers 100 voice minutes per month – a small number in comparison to the generally unlimited voice plans T-Mobile offered in the past. The consumer preference for messaging and data services now makes voice minute caps acceptable for certain consumers.<sup>30</sup> Data demand is on the rise, and such demand is showing no sign of abating.

Some service providers have indicated that data demand is doubling on the network every six months.<sup>31</sup> This is happening despite carrier efforts to entice customers to continue to utilize voice legacy networks. AT&T, for example, announced a free mobile-to-mobile calls incentive to retain voice customers on its network once Verizon began offering the iPhone.<sup>32</sup> Nevertheless, some wireless commentators claims we have reached a point where “operators are ready to put all their eggs in the data basket.”<sup>33</sup>

The dominance of data has not been lost on consumers. The increased popularity of smartphones, coupled with increased data speeds, caused a rapid increase in data consumption by

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<sup>28</sup> Kevin C. Tofel, *T-Mobile's \$30 monthly plan favors data over voice minutes*, GIGAOM, Oct. 3, 2011, <http://gigaom.com/mobile/t-mobiles-30-monthly-plan-favors-data-over-voice-minutes/>

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*; Amy Vernon, *Mobile Data Surpasses Voice Traffic For First Time*, HOT HARDWARE.COM, Apr. 2, 2010, <http://hothardware.com/News/Mobile-Data-Surpasses-Voice-Traffic-For-First-Time/>.

<sup>31</sup> Kevin C. Tofel, *T-Mobile's \$30 monthly plan favors data over voice minutes*, GIGAOM, Oct. 3, 2011, <http://gigaom.com/mobile/t-mobiles-30-monthly-plan-favors-data-over-voice-minutes/>.

<sup>32</sup> Stacey Higginbotham, *It's Official: Voice Is Worthless*, GIGAOM, Feb. 9, 2011, <http://gigaom.com/mobile/its-official-voice-is-worthless/>.

<sup>33</sup> *Id.*

consumers. A typical consumer only viewed text-based WAP Internet pages occasionally on their feature phone – perhaps using 10-20 Mbps a month. Now, a consumer using a smartphone with 4G LTE speeds to stream video and audio will use gigabytes, rather than megabytes, of data. Data consumption will continue to grow exponentially as network speeds become faster and consumers become increasingly comfortable with advanced technology. Moreover, a recent survey commissioned by Devicescape found that 83 percent of respondents expect their wireless carrier to provide Wi-Fi service as part of a bundled data package.<sup>34</sup> Carriers, in fact, “promote Wi-Fi as a cost-saving measure for their users” and, due to the emergence of increasingly ubiquitous free Wi-Fi everywhere from coffee shops to public parks, carriers will be increasingly incented to promote and facilitate Wi-Fi access.

**D. The Prepaid Industry Continues to Grow, and Become More Competitive, at the Expense of Postpay Services**

Due to numerous factors, including a faltering economy, prepaid wireless plans have become an increasingly popular consumer option. In these difficult, uncertain economic times, expensive, unpredictable postpay services are becoming a less attractive option for consumers. Consumers are finding prepaid services to be an affordable alternative, which allows them to cut costs and avoid lengthy contracts. A 2010 study commissioned by the New Millennium Research Organization found that new prepaid wireless phone customers outnumbered new postpaid customers for the first time, with prepaid service growing at 17 percent, and postpaid

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<sup>34</sup> Phil Goldstein, *Survey: 83% Expect Carriers to Provide Wi-Fi Service as part of Bundle*, FIERCEWIRELESS, Nov. 22, 2011 [http://www.fiercewireless.com/story/survey-83-expect-carriers-provide-wi-fi-service-part-bundle/2011-11-22?utm\\_medium=nl&utm\\_source=internal](http://www.fiercewireless.com/story/survey-83-expect-carriers-provide-wi-fi-service-part-bundle/2011-11-22?utm_medium=nl&utm_source=internal).

service growing at just three percent.<sup>35</sup> One driving factor is that many consumers are experiencing poor credit scores due to unemployment and other economic stresses. These credit-challenged individuals often are reluctant to share their credit scores in order to qualify for postpay services, or they may not be accepted as postpay customers if they do undergo a credit check. Interestingly, it is not just the small, rural and mid-tier carriers that are offering prepaid services to accommodate these financially-challenged customers. The large carriers also have begun to recognize that they can service credit-challenged users with less risk using prepaid offerings. Thus, the “Big Four” have begun to compete with the smaller carriers in offering robust prepaid service plans, further diminishing the importance of postpaid services.<sup>36</sup>

Prepaid service plans provide great flexibility to the customer as they allow the customer to budget their service expenses, customize their own plan, and easily switch carriers if they are not satisfied with their wireless service or their needs change. Wireless service providers are aware that consumers may vote with their feet and go elsewhere if they are not satisfied with their current plan. As a result, both large and small wireless providers are continuously offering new services and decreasing prices to stay competitive in the market and reduce churn. For example, both Verizon and Cricket Wireless have prepaid service plans that include ancillary

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<sup>35</sup> Karl Bode, *New Prepaid Wireless Users Outnumber Postpaid for First Time*, DSLREPORTS.COM, Apr. 5, 2010, <http://www.dslreports.com/shownews/New-Prepaid-Wireless-Users-Outnumber-Postpaid-For-First-Time-107745>.

<sup>36</sup> See e.g. Kent German, *Verizon adds \$50 unlimited prepaid plan*, CNET, Apr. 27, 2011, [http://www.cnet.com/8301-17918\\_1-20058005-85.html](http://www.cnet.com/8301-17918_1-20058005-85.html); Brad Molen, *AT&T to offer \$50 unlimited prepaid plan, ready to ‘GoPhone’ June 26<sup>th</sup>*, ENGADGET.COM, Jun. 21, 2011, <http://www.engadget.com/2011/06/21/atandt-to-offer-50-unlimited-prepaid-plan-ready-to-gophone-jun/>; Marguerite Reardon, *Sprint and Wal-Mart offer cheap prepaid plan*, CNET, May 13, 2010, [http://news.cnet.com/8301-30686\\_3-20004965-266.html](http://news.cnet.com/8301-30686_3-20004965-266.html); Brad Molen, *T-Mobile baking fresh prepaid plans May 22, adds more 4G data for flavor*, ENDGADGET.COM, May 14, 2011, <http://www.engadget.com/2011/05/14/t-mobile-baking-fresh-prepaid-plans-may-22-adds-more-4g-data-fo/>.

services such as three-way calling, caller ID, call waiting and call forwarding.<sup>37</sup> MetroPCS offers additional services like MetroWeb Navigator for free with its prepaid plan – Verizon, on the other hand, charges extra for its VZ Navigator.<sup>38</sup>

As the wireless marketplace becomes increasingly occupied by a prepaid services model, certain issues that previously have vexed the Commission – such as early termination fees (“ETFs”) and truth-in-billing – will become less important. Pay in advance services generally are offered for discrete time periods without long term contracts, thus eliminating the early termination fee problem. And, if a consumer using a prepaid service does not like something about the service they are receiving – for example, if they experience bill shock or cramming – they can easily switch their service to another provider. This brings competitive discipline to the market and reduces the need for regulatory intervention. Indeed, MetroPCS recently filed comments pointing out that the unique nature of wireless billing platforms and industry practices affords consumers protections against unlawful billing practices such as cramming without the need for further regulations.<sup>39</sup>

#### **IV. METROPCS CONTINUES TO GROW AND ADAPT TO THE CHANGES TO THE WIRELESS INDUSTRY**

As the wireless industry changes, small, rural and mid-tier wireless carriers have been forced to adapt in a rapid fashion in order to survive. MetroPCS is no exception.

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<sup>37</sup> Kent German, *Verizon adds \$50 unlimited prepaid plan*, CNET, Apr. 27, 2011, [http://www.cnet.com/8301-17918\\_1-20058005-85.html](http://www.cnet.com/8301-17918_1-20058005-85.html).

<sup>38</sup> *Id.*

<sup>39</sup> Comments of MetroPCS Communications, Inc. in CG Docket Nos. 11-116, 09-158, CC Docket No. 98-170 (filed Oct. 24, 2011) (“*MetroPCS Cramming Comments*”).

### **A. MetroPCS' Deployment of 4G Technology**

The introduction of 4G technology brought along a “tidal wave of new mobile innovations”<sup>40</sup> to the wireless industry. In September 2010, MetroPCS became the first mobile wireless provider to launch 4G LTE services in the United States. At the same time, MetroPCS also released the world’s first commercially available dual mode 4G LTE-enabled CDMA handset, the Samsung Craft. Since its initial launch, MetroPCS has deployed LTE services in all of its major metropolitan areas, increasing speeds for its customers as well as overall capacity for the network.<sup>41</sup> The investment in 4G technology provided consumers with the ability to “do more with unlimited talk, text and 4G LTE Web browsing as well as data access for music and video downloads, including live streaming video.”<sup>42</sup> Other wireless providers soon began to follow suit, with 4G deployment, with each carrier developing its own path for offering faster network speeds and greater capacity. This advanced technology is a force that drives innovation and promotes competition, greatly contributing to the evolving broadband ecosystem as it “deliver[s] a high-speed Internet experience comparable to what many enjoy on desktops.”<sup>43</sup>

The next frontier for providers, which holds great potential to promote more efficient services to consumers, is the introduction of Voice over Long-Term Evolution (“VoLTE”)

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<sup>40</sup> Julius Genachowski, Chairman, Fed. Commc’n Comm’n, Remarks as Prepared for Delivery at the CTIA Wireless Convention (Mar.22, 2011) *available at* [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2011/db0322/DOC-305309A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db0322/DOC-305309A1.pdf). (“Chairman Genachowski CTIA Speech”).

<sup>41</sup> Press Release, MetroPCS, MetroPCS Launches 4G LTE Service in the Tampa Metropolitan Area (Apr. 1, 2011) <http://www.metropcs.com/presscenter/newsreleasedetails.aspx?id=17>.

<sup>42</sup> Press Release, MetroPCS, MetroPCS Launches 4G LTE Service in the Florida Keys (July 1, 2011) <http://www.metropcs.com/presscenter/newsreleasedetails.aspx?id=25>.

<sup>43</sup> *Chairman Genachowski CTIA Speech*.

technology. Although still developing,<sup>44</sup> VoLTE ultimately will deliver voice and message services over LTE in an efficient manner that provides consumers with both high-fidelity voice calling and simultaneous high speed data usage over a single network platform. By integrating voice and data service offerings into a single stream, VoLTE technology increases efficiency in the use of scarce spectrum resources and will allow a greater number of customers to be served over the same amount of finite spectrum. Once deployed, VoLTE will allow carriers to begin reaffirming existing 2G and 3G spectrum and to transition it to 4G services. A number of wireless service providers, including MetroPCS, have expressed interest in deploying VoLTE over the next few years.<sup>45</sup>

## **B. MetroPCS' Role in Intermodal Competition**

As MetroPCS previously has recognized, and as the *Fifteenth Report* demonstrates, there has been a “rising trend in households who have ‘cut the cord’” and gone wireless-only.<sup>46</sup> Wireless services are playing an increasing role in acting as a substitution for traditional landline voice and data services. New research from the U.S. Centers for Disease Control and Prevention

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<sup>44</sup> To MetroPCS' knowledge, there currently is not any commercial implementation of VoLTE worldwide.

<sup>45</sup> See, e.g., Brad Molen, *MetroPCS will begin transition to VoLTE early next year*, ENGADGET.COM, Aug. 2, 2011, <http://www.engadget.com/2011/08/02/metropcs-will-begin-transition-to-volte-early-next-year/>; Sean Hollister, *AT&T also looking at Voice over LTE, paints a bullseye on 2013*, ENGADGET.COM, Feb. 15, 2011 <http://www.engadget.com/2011/02/15/atandt-also-looking-at-voice-over-lte-paints-a-bullseye-on-2013/>; Chris Ziegler, *Verizon successfully completes first VoLTE call on commercial network in the world, plans 2012 availability*, ENGADGET.COM, Feb. 9, 2011, <http://www.engadget.com/2011/02/09/verizon-successfully-completes-first-volte-call-in-the-world-pl/>.

<sup>46</sup> *Fifteenth Report* ¶ 365; See also Comments of MetroPCS Communications, Inc. in GN Docket No. 11- 121, 8 – 11 (filed Sept. 6, 2011).

has found that approximately one-fourth of all U.S. households only use wireless phones.<sup>47</sup> The report further finds that low-income homes are more likely to be wireless-only – a trend that is not likely to reverse.<sup>48</sup> Many of MetroPCS’ customers are drawn from this quarter of the population, and rely solely on their mobile phone for all of their voice and data services. It is important for the Commission to recognize that mobile devices are often the only means for an increasing number of people to access the Internet, and other data services as well.<sup>49</sup> MetroPCS’ innovative fixed-price, tax-inclusive, unlimited-use wireless plans are a current driving force behind mobile-only reliance. In order to satisfy these customers, MetroPCS must offer flexible, satisfactory voice and data plans over a reliable network.

Many first-time wireless users are recent immigrants, new to the workforce, or low-income individuals who, without such affordable wireless service, would not be able to have a mobile phone. MetroPCS customers pay for service in advance, without restrictive credit reviews, with service plans currently beginning as low as \$40 per month, which includes all applicable taxes and regulatory fees. Such plans offer a robust mobile broadband experience to consumers at an affordable price. As a consequence, MetroPCS’ service plans are helping bridge the broadband divide and contributing to the achievement of the Commission’s National Broadband Plan goals. MetroPCS’ service plans provide consumers with simple, affordable, predictable and flexible options so that they get exactly what they want, and are not shocked

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<sup>47</sup> Amy Gahrn, *Arkansas, Mississippi top U.S. in wireless-only households*, CNN, Apr. 30, 2011, [http://articles.cnn.com/2011-04-20/tech/wireless.only.households.gahrn\\_1\\_wireless-only-households-wireless-telephones-regional-wireless-carriers?\\_s=PM:TECH](http://articles.cnn.com/2011-04-20/tech/wireless.only.households.gahrn_1_wireless-only-households-wireless-telephones-regional-wireless-carriers?_s=PM:TECH).

<sup>48</sup> Mike Snider, *More people ditching home phone for mobile*, USATODAY, Apr. 21, 2011, <http://www.usatoday.com/tech/news/2011-04-20-cellphone-study.htm>.

<sup>49</sup> Cecilia Kang, *Going Wireless all the way to the Web*, WASH. POST, Jul. 10, 2010, at A6, available at: <http://www.washingtonpost.com/wp-dyn/content/article/2010/07/09/AR2010070905521.html>.

when their bill arrives. These qualities improve the overall wireless experience for consumers, and further spur broadband adoption by many Americans who otherwise would be without broadband service.

## **V. THE MOBILE WIRELESS MARKETPLACE REQUIRES COMMISSION ACTION TO PROMOTE COMPETITION**

### **A. The Commission Must Protect Access to Critical Upstream and Downstream Inputs**

Mobile wireless service acts as a competitive substitute for traditional wireline connections, fosters broadband deployment and decreases the digital divide. To maximize these benefits, the Commission must adopt policies that promote not only intermodal competition, but intramodal competition as well. This requires Commission focus on both the upstream and downstream segments of the mobile wireless ecosystem.

The upstream market for mobile wireless service inputs – such as access to wireless handsets, wholesale carrier-to-carrier wireless data roaming services, and adequate backhaul at reasonable rates, is not competitive and requires prompt Commission attention. And, further consolidation in the industry could only make matters worse in the future. It is critical for wireless carriers to continue to offer consumers the very best services and products which include nationwide data coverage, the latest and most advanced handsets, and fast overall coverage. Without access to reasonable data roaming services, “game changing” handsets, and adequate backhaul and infrastructure, small, rural and mid-tier wireless service providers are placed at a distinct disadvantage in the wireless market. In addition, lack of access to these crucial services act as a severe barrier to new entrants, further diminishing opportunities for



innovation, as well as delaying additional broadband deployment – which directly counters the Commission’s National Broadband Plan.<sup>50</sup>

**i. Despite Commission Efforts, Lack of Data Roaming at Reasonable Rates Continues to be a Major Disadvantage for Small, Rural, and Mid-Tier Wireless Carriers**

As discussed above, wireless data usage is increasing each and every day, with consumers constantly growing more dependent on these services. In order to survive in this environment, service providers must be able to deliver robust wide area data services. As MetroPCS previously has stated, this consumer demand demonstrates that “new entrants and small, rural and mid-tier carriers simply must be able to provide their customers with meaningful access to wireless data roaming, including next-generation broadband services such as LTE, at reasonable rates.”<sup>51</sup> MetroPCS appreciates the Commission’s previous efforts to create a more competitive data roaming market.<sup>52</sup> But, even the Commission has recognized that the data roaming rules “do not enable a smaller or regional provider to replace the competitive position of a nationwide facilities-based provider.”<sup>53</sup> Unfortunately, despite the Commission’s efforts, to date the landscape for reasonable data roaming has not yet improved, and there is still a long way to go before this market can be deemed functional and competitive.

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<sup>50</sup> See FCC, CONNECTING AMERICA: A NATIONAL BROADBAND PLAN FOR OUR FUTURE (2010).

<sup>51</sup> Comments of MetroPCS Communications, Inc. in WT Docket No. 05-265, 40 (filed June 14, 2010).

<sup>52</sup> See e.g., *In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Second Report and Order, WT Docket No. 05-265 (rel. Apr. 7, 2011).

<sup>53</sup> *FCC Staff Analysis* at ¶ 67.

At this time, the roaming market still remains technology-limited and therefore a CDMA provider cannot feasibly obtain data roaming from a GSM carrier and *vice versa*.<sup>54</sup> The national CDMA data roaming market offers only Verizon and Sprint Nextel as possible nationwide roaming partners. The GSM market offers only AT&T and T-Mobile as potential nationwide roaming partners.<sup>55</sup> And, if the AT&T/T-Mobile transaction is approved, T-Mobile will be removed as a possible roaming partner, which “removes an important potential benchmark that could be used in roaming complaints for determining what constitutes reasonable voice and/or data roaming agreements.”<sup>56</sup> If AT&T and T-Mobile merge, the national GSM data roaming market will become a virtual monopoly. Thus, small, rural, and mid-tier carriers using GSM will not have the limited roaming alternative to AT&T that T-Mobile provided.

The monopolistic and duopolistic environment of the CDMA and GSM roaming markets is problematic. A similar problem is emerging in the LTE data roaming market. Verizon has gotten an early lead on deploying LTE nationwide and thus enjoys monopoly-like power in 4G LTE data roaming negotiations. And LTE roaming options can be even more limited than CDMA/GSM roaming options to the extent that Verizon pursues LTE on unique bands of spectrum.<sup>57</sup> For example, MetroPCS deploys LTE on AWS and PCS spectrum, and its customer handsets do not generally provide 700 MHz spectrum access. Verizon deployment of LTE on its 700 MHz C Block spectrum provides no meaningful near term roaming opportunity. Thus, once a carrier selects an LTE partner, it will have to offer different handsets – to the extent they are

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<sup>54</sup> Comments of MetroPCS Communications, Inc., in Docket No. 05-265, 44, (filed June 14, 2010) (“*MetroPCS Second FNPRM Data Roaming Comments*”).

<sup>55</sup> *FCC Staff Analysis* at ¶¶ 100, 102.

<sup>56</sup> *Id.* at ¶ 104.

<sup>57</sup> *MetroPCS Second FNPRM Data Roaming Comments*, at 44 – 45.

available in a suitable form<sup>58</sup> – that are compatible on that specific band. This not only inhibits near term data roaming prospects, but also locks the carrier into a relationship with its roaming partner. The Wireless Bureau recently found that roaming agreements are notoriously difficult to negotiate because of the lack of incentive or mutual interest between the large incumbent on one side and the smaller carrier on the other.<sup>59</sup> This problem is exacerbated in the 4G LTE context. The largest carriers have no incentives to offer reasonable rates to other carriers. This is an expensive process for the carrier seeking a roaming partner – not only does the carrier have to pay exorbitant prices for the services, but there are also other substantial costs involved. As the Wireless Bureau Staff Report stated:

Roaming is often a costly input, requires that the providers obtain for their subscribers mobile devices technically compatible with the roamed-upon network, and limits the providers to offering service consistent with the capabilities of that network.<sup>60</sup>

This finding is troubling because, according to various reports, Verizon, AT&T, and Sprint are all planning to deploy or have deployed 4G technology on an array of spectrum bands.<sup>61</sup> And, since these major nationwide carriers boast vastly greater subscribership of a smaller carrier, such as MetroPCS, there is little if any incentive for them to offer “commercially reasonable rates” in negotiations.<sup>62</sup> This will greatly undermine the ability of smaller carriers to offer

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<sup>58</sup> Adding an additional spectrum band to a handset can increase its size and cost which can make the alternative less attractive for consumers.

<sup>59</sup> See e.g. *FCC Staff Analysis* at ¶ 67.

<sup>60</sup> *Id.*

<sup>61</sup> See Alton Drew, *Is the FCC Poised to Consider the Economic Impact of Future 4G Deployment?* POLITIC365, Aug. 30, 2011, <http://politic365.com/2011/08/30/is-the-fcc-poised-to-consider-the-economic-impact-of-future-4g-deployment/>.

<sup>62</sup> See *In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Second Report and Order, WT Docket No. 05-265, ¶ 1 (rel. Apr. 7, 2011); see also *FCC Staff Analysis* at ¶¶ 37, 38.

nationwide data services to certain segments of the population and particularly lower income populations that need it most.

Using the data roaming rates proposed by certain nationwide carriers, a customer when roaming, using a very moderate amount of data, would quickly run up roaming charges far in excess of the entire costs of their monthly service plan.<sup>63</sup> The wholesale data roaming rates that carriers such as AT&T and Verizon are offering other carriers are much higher than the fully loaded retail rates they are offering their own customers for data services. Rates of this nature are patently uneconomic and have to be decreased dramatically in order for small, rural and mid-tier carriers to stay afloat in the wireless data marketplace. If carriers are unable to obtain data roaming services, including 4G LTE, at fair prices that will allow them to compete with the large national carriers, the retail competition that exists today will ultimately disappear as small, mid-tier and rural carriers are forced out of the market. In order to prevent this from occurring, the Commission must take further steps to encourage large carriers to enter data-roaming agreements at reasonable rates on an expedited basis.<sup>64</sup>

**ii. Exclusive Handset Arrangements Further Establish an Anti-Competitive Environment within the Wireless Ecosystem**

Steps also must be taken to address problems in the handset market. Exclusive arrangements that restrict distribution of handsets to a single service provider, or to only a few service providers, have anti-competitive consequences. Similar to the data roaming market, the largest carriers dominate the handset market as well. As the market power of the larger carriers

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<sup>63</sup> This is borne out in MetroPCS' experiences in trying to negotiate data roaming arrangements, where the proposed rates can easily exceed \$100-\$200 or more a gigabyte – which means a customer roaming 30% of the time would cost more than their entire monthly ARPU.

<sup>64</sup> For example, the Commission should favorably consider the Petition for Reconsideration filed by Blanca Telephone seeking a “shot clock” for data roaming negotiations. *See* Blanca Telephone Company, Petition for Reconsideration, WT Docket No. 05-265 (filed Jun. 6, 2011).

expands, the number of carriers to which manufacturers need to sell particular handsets to make a market diminishes.

The Commission recognized the negative effects that these arrangements may have on potential entrants in its *Fifteenth Report*.<sup>65</sup> Although arguments have been made that exclusive agreements can foster innovation and thus benefit consumers in the long run, the Commission has acknowledged that these perceived trade-offs must be evaluated on a case-by-case basis using a cost benefit analysis.<sup>66</sup> By restricting the distribution of certain cutting-edge handsets to large nationwide service providers that can afford to sustain an exclusive contract, these arrangements threaten smaller regional, rural and mid-tier carriers.

It is no secret that consumers are drawn to individual service providers primarily due to the handsets that those providers offer, because, “handsets directly affect the quality of a consumer’s mobile wireless experience.”<sup>67</sup> Indeed, once AT&T secured the Apple iPhone on an exclusive basis, 40% of customers switched from their service provider in order to obtain that coveted smartphone.<sup>68</sup> Numerous studies have examined the factors that consumers consider while making wireless purchases and they have concluded that handsets play an important role in the consumers ultimate decision.<sup>69</sup> A Consumers Union report found that 27% of all

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<sup>65</sup> *Fifteenth Report* ¶ 65 n. 166.

<sup>66</sup> *Id.* (citing Massimo Motta, *Competition Policy: Theory and Practice*, Cambridge University Press, 2004, at 378).

<sup>67</sup> *FCC Staff Analysis* at ¶ 117.

<sup>68</sup> Fred Vogelstein, *The Untold Story: How the iPhone Blew Up the Wireless Industry*, WIRED, Jan. 9, 2008, [http://www.wired.com/gadgets/wireless/magazine/16-02/ff\\_iphone?currentPage=all](http://www.wired.com/gadgets/wireless/magazine/16-02/ff_iphone?currentPage=all).

<sup>69</sup> See e.g., Rita Chang, *Proof that Handset Brands Help Sell Wireless Plans*, ADVERTISING AGE, Oct. 27, 2008, <http://adage.com/article/news/proof-handset-brands-sell-wireless-plans/132051/> (Google Study); *Best Cell Phone Service*, CONSUMER REPORTS, Jan. 2010, available at <http://www.consumerreports.org/cro/magazine-archive/2010/january/electronics-computers/cell-phone-service/overview/cell-phone-service-ov.htm> (Consumer Reports Study).

respondents claimed to have a specific wireless handset in mind when they went shopping for a new wireless phone.<sup>70</sup> As discussed briefly above, without access to the new “game changing” handsets, small, rural and mid-tier carriers that are unable to obtain such exclusive agreements may ultimately be driven or consolidated out of the market. The exclusive handset arrangements further limit consumer choice by discouraging customers from switching to a competitive service once their initial contract commitment has expired. This problem is exacerbated by the fact that many of these handsets will not work on other networks as a result of locking technology, or the sheer fact that they are incompatible.

The crucial role that handsets play in the wireless market was demonstrated recently in connection with AT&T’s proposed merger with T-Mobile, when the D.C. District Court released an opinion on AT&T and T-Mobile’s Motion to Dismiss the antitrust lawsuit filed by Sprint and C Spire (formerly Cellular South) to enjoin AT&T’s proposed acquisition of T-Mobile. Although the Court did dismiss several claims, it denied the Motion with regard to the Sprint and C Spire handset claim.<sup>71</sup> Sprint and C Spire argued that device preferences increasingly drive consumer choice of wireless carriers, and as a result, carriers compete with each other to secure the most desirable devices for their own networks.<sup>72</sup> The Court noted, that, “where a defendant by means of anticompetitive conduct, restricts or forecloses a competitor plaintiff’s access to a necessary input, courts have found that the resulting loss is injury of the type that the antitrust laws were designed to prevent.”<sup>73</sup> The Court concluded that mobile wireless devices, and

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<sup>70</sup> *Fifteenth Report* ¶ 325.

<sup>71</sup> *Sprint Nextel Corporation v. AT&T et al.*, Case No. 1:2011-cv-01600, Memorandum Opinion, 44 (filed Nov. 2, 2011).

<sup>72</sup> *Id.* at 15.

<sup>73</sup> *Id.*

smartphones in particular, were necessary inputs for Sprint's and C Spire's businesses.<sup>74</sup> The Court recognized that wireless carriers compete against each other as fellow purchasers of wireless devices, which they procure from manufacturers in order to sell to consumers, and therefore, the anticompetitive acts made possible by an antitrust violation, such as the AT&T/T-Mobile merger, would provide competitive injury to the other providers.<sup>75</sup> Similarly, in its Staff Analysis, the Wireless Bureau noted that a merged AT&T/T-Mobile and Verizon Wireless could make it more difficult for other providers to access as sufficient a range of cutting-edge handsets as they would absent the transaction.<sup>76</sup> Such an analysis led the Wireless Bureau to state that a substantial and material fact existed as to whether a loss of innovation in the handset arena would occur if the AT&T/T-Mobile transaction was allowed to proceed.<sup>77</sup>

**iii. Backhaul and Infrastructure are Critical Input Markets that Affect Overall Competition**

The lack of adequate backhaul and infrastructure at reasonable prices also affects the competitive environment of the wireless industry. The current demand for mobile wireless broadband has further intensified the need for backhaul and infrastructure resources. These critical resources play an important role in mobile wireless broadband deployment, since adequate backhaul capacity is essential to maximize the capacity of the entire network. Not surprisingly, the demand for wireless backhaul is growing at an accelerating pace, and this trend will continue as the wireless industry requires more data and consumes greater amounts of bandwidth. The Commission previously has recognized the critical role that backhaul plays in

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<sup>74</sup> *Id.* at 19 - 20.

<sup>75</sup> *Id.* at 26.

<sup>76</sup> *FCC Staff Analysis* at ¶ 121.

<sup>77</sup> *FCC Staff Analysis* at ¶ 122.

wireless broadband service deployment and has determined that “[i]n light of the growing need for backhaul, cost-efficient access to adequate backhaul will be a key factor in promoting robust competition in the wireless market.”<sup>78</sup>

In another ongoing proceeding, MetroPCS has supported the relaxation of antenna standards to facilitate to use of smaller antennas.<sup>79</sup> Permitting the use of smaller antennas will reduce costs, stimulate increased investment in the industry, and increase the number of available microwave dishes on sites; all results that will stimulate competition in the wireless industry. MetroPCS also urges the Commission to allow wider channels in the 6 GHz and 11 GHz bands which will provide greater capacity and allow providers and consumers alike to enjoy the full benefits of next-generation wireless.<sup>80</sup> These changes also will foster greater competition in the wireless industry, allowing for more participants with increased capacity. With more capacity available, more opportunities will exist for innovative technologies to bring the U.S. to the next stage in wireless development. This is now more important than ever because the exponential increase in data usage requires ever-increasing backhaul capacity.

#### **B. The Commission Must Implement Policies that will Encourage Competition**

There are plenty of other opportunities for the Commission to further promote competition in the wireless marketplace. For example, the Commission should take action to resolve Channel 51 interference issues and 700 MHz interoperability, as well as, refrain from imposing unnecessary regulations. Perhaps most important, the Commission must draw more

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<sup>78</sup> *Fifteenth Report* at ¶ 322.

<sup>79</sup> See Comments of MetroPCS Communications, Inc., in WT Docket No. 10-153, RM-11602, pg. 4 (filed Oct. 4, 2011) (“*MetroPCS Wireless Backhaul Comments*”)

<sup>80</sup> See MetroPCS Wireless Backhaul Comments, 6 -7.



meaningful regulatory distinctions between dominant and non-dominant carriers to preserve competition.

**i. Channel 51 Interference and 700 MHz Interoperability Need to be Promptly Resolved by the Commission**

Earlier this year, CTIA and RCA submitted a Petition for Rulemaking and Request for Licensing Freezes in which they urged the Commission to take action to prevent further interference caused by TV stations on Channel 51 so that wireless broadband services in the Lower 700 MHz A Block would be properly deployed.<sup>81</sup> In response, the Commission wisely instituted a general freeze on the filing and processing of applications for Channel 51.<sup>82</sup> Although this was a good first step, the interference problems presented by existing Channel 51 licenses have yet to be resolved. In order to further the goals of the National Broadband Plan, the Commission should promptly institute a working group comprised of industry stakeholders to develop recommendations to resolve this interference issue. In the meantime, the Commission should look favorably on any waiver requests the Commission encounters with respect to Channel 51 interference.<sup>83</sup> Solving the Channel 51 interference issue will create more competition from new entrants, and promote further wireless broadband services for existing carriers.

To foster innovative 4G technology and greater competition in the 700 MHz band, the Commission also must resolve the serious pending interoperability issue by requiring all 700

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<sup>81</sup> CTIA – The Wireless Association and Rural Cellular Association, Petition for Rulemaking and Request for Licensing Freezes, in RM-11626 (filed Mar. 15, 2011).

<sup>82</sup> Public Notice, FCC, General Freeze on the Filing and Processing of Applications for Channel 51 Effective Immediately and Sixty (60) Day Amendment Window for Pending Channel 51 Low Power Television, TV Translator and Class A Applications, in DA 11-1428 (Aug. 22, 2011).

<sup>83</sup> See FCC, CONNECTING AMERICA: A NATIONAL BROADBAND PLAN FOR OUR FUTURE (2010).

MHz equipment to be interoperable across the entire 700 MHz band. As MetroPCS previously has advocated,<sup>84</sup> small, rural and mid-tier carriers are still waiting for the 700 MHz band to develop in a competitively neutral fashion that will enable consumers to enjoy more choices, more competitive prices and reasonable roaming prospects. For this to happen, restrictive equipment designs that deprive small, rural and mid-tier carriers of their ability to benefit from economies of scale in handset manufacturing must be prohibited. The absence of cross-band compatible 700 MHz handsets also will prevent smaller carriers from offering nationwide roaming options to customers. For example, lower-income consumers searching for competitively priced pre-paid tax-inclusive service packages like those offered by MetroPCS will be left behind if affordable entire-band compatible equipment is not available in the near term. The largest carriers will secure an insurmountable head start. This will exacerbate the digital divide by stratifying the broadband market into groups of “haves” and “have nots,” in direct contravention of the purposes of the National Broadband Plan that strives to ensure that every American has reasonable, affordable access to advanced broadband services.

**ii. Unnecessary Regulations on Wireless Service Providers, Particularly Small, Rural and Medium-Sized Providers, will Diminish Competition**

The Commission also should refrain from imposing unnecessary regulations on wireless carriers, and, in particular, on small, rural and mid-tier wireless service providers. Additional outage reporting rules, intrusive cramming requirements, burdensome net neutrality transparency rules and other regulations that place regulatory burdens on small, rural and mid-tier carriers will diminish competition and should not be adopted or retained by the Commission. Regulations of this nature divert crucial limited resources from broadband deployment, and will have a

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<sup>84</sup> See generally, Comments of MetroPCS Communications, Inc. in RM-11592 (filed Apr. 30, 2010).

particularly harsh affect on small, rural and medium-sized carriers that have limited resources when compared to the larger carriers. To the extent that regulations such as these are deemed absolutely necessary by the Commission, they should only be applied to the largest carriers. If they prove to be beneficial to and desired by consumers, normal competitive market forces will require smaller carriers to comply with them voluntarily.

MetroPCS continues to oppose the extension of Part 4 outage reporting requirements to broadband Internet access providers.<sup>85</sup> The Part 4 outage reporting regulations were designed for traditional voice and paging services, and not broadband Internet access providers. Extending these often burdensome reporting requirements to a whole new technology that does not necessarily require such regulation would be burdensome. Avoiding new regulations is particular appropriate given the recent Executive Order requiring agencies to refrain from imposing regulatory mandates that do not pass a stringent cost/benefit analysis – a policy that Chairman Genachowski has endorsed.<sup>86</sup> Indeed, MetroPCS has stated that it “believes that competition and innovation are best served by not extending the current outage reporting rules to new spectrum bands or technologies, including AWS and 700 MHz.”<sup>87</sup> In fact, the imposition of these regulations on such new technologies might have the effect of diminishing innovation, as

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<sup>85</sup> See Comments of MetroPCS Communications, Inc. in ET Docket No. 04-35, WC Docket Nol. 05-271, GN Docket Nos. 09-47, 09-51, 09-137, 2 (filed August 2, 2010); Comments of MetroPCS Communications, Inc. in PS Docket No. 11-82 (filed October 7, 2011) (“*MetroPCS Broadband Outage Comments*”).

<sup>86</sup> President Barack Obama issued an Executive Order on July 11, 2011 which called on federal agencies, *inter alia*, to use the “least burdensome tools for achieving regulatory ends,” by conducting both quantitative and qualitative cost-benefit analyses. Exec. Order No. 13579, 76 FR 41587 (Jul. 14, 2011), available at <http://www.gpo.gov/fdsys/pkg/FR-2011-07-14/pdf/2011-17953.pdf>; News Release, FCC, Statement from FCC Chairman Julius Genachowski on the Executive Order on Regulatory Reform and Independent Agencies (Jul. 11, 2011), [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-308340A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-308340A1.pdf).

<sup>87</sup> Comments of MetroPCS Communications, Inc. in PS Docket No. 11-82, 20 (filed October 7, 2011) (“*MetroPCS Broadband Outage Comments*”).

well as competition. As LTE is still a new technology, the Commission should encourage the continued development of next-generation wireless services by making them as free as possible from burdensome regulatory oversight.

Similarly, unnecessary cramming regulations also will affect the competitive state of the wireless industry. MetroPCS maintains its view that the competitive wireless market already forces carriers to safeguard their customers, and the imposition of additional, unnecessary regulations, will only harm this environment.<sup>88</sup> Commission mandates regulating the carrier/customer relationship have the potential to stifle the natural development and transformation of the industry, and make it more difficult for small, rural and mid-tier carriers to compete with large, nationwide service providers. For example, with regard to proposed cramming regulations,<sup>89</sup> some carriers may already place restrictions on third party billing in order to avoid billing surprises and to thereby gain a competitive advantage in the retail market. If the Commission mandates regulations involving what were once “options,” this intervention will undoubtedly diminish the competitive value of these options and further interfere with the market forces.<sup>90</sup>

### **iii. A New Regulatory Paradigm is Justified**

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<sup>88</sup> Comments of MetroPCS Communications, Inc. in CG Docket Nos. 11-116, 09-158, CC Docket No. 98-170, 11 (filed October 24, 2011) (“*MetroPCS Cramming Comments*”).

<sup>89</sup> See generally *Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges* (“*Cramming*”); *Consumer Information Disclosure; Truth-in-Billing and Billing Format*, Notice of Proposed Rulemaking, CG Docket Nos. 11-116, 09-158; CC Docket No. 98-170, FCC-11-106 (filed Jul. 12, 2011).

<sup>90</sup> As noted above, if the Commission does adopt further outage reporting or anti-cramming regulations, it should only do so for the largest nationwide carriers. The costs of increased regulations are more easily borne by the largest carriers, and competitive market forces will bring smaller carriers into line if particular policies are proved valuable to consumers.

As the ability of the largest carriers to control upstream and downstream competitive inputs in the wireless market increases, the Commission must seriously consider adopting specific regulations for the dominant carriers that can preserve competition. The largest nationwide carriers are becoming increasingly dominant, and the Commission should consider adopting – as it has in the past in the wireline context – a regulatory regime that draws major regulatory distinctions between dominant and non-dominant carriers. The wireless industry currently is threatened by the lack of competition as a result of the largest carriers acting in a dominant role due to their significant size, resources, and market power. Under a dominant/non-dominant regulatory regime, service providers would be distinguished from one another on the basis of their dominance or power in the marketplace, which would result in the application of different regulations. For example, dominant carriers could be required to file and get approval for major contracts (e.g., exclusive handset contracts, roaming agreement, and backhaul contracts). Dominant carrier regulation is especially appropriate for the two largest carriers, as their outsized market shares in comparison to the rest of the industry result in substantial market power, creating circumstances ripe for anticompetitive abuse. By adopting a new regulatory regime that would monitor any efforts of the largest carriers to restrict access to critical inputs, the Commission would level the playing field so that all carriers have an equal and fair opportunity to compete within the wireless marketplace.

## **VI. THE COMMISSION MUST SECURE AND FAIRLY DISTRIBUTE ADDITIONAL SPECTRUM TO PROMOTE COMPETITION AND INNOVATION IN THE WIRELESS MARKET**

### **A. Limited Access to Spectrum will Negatively Affect Competition, as well as Broadband Deployment**

The Commission previously has acknowledged that “mobile broadband is being adopted faster than any computing platform in history, and could surpass all prior platforms in their

potential to drive economic growth and opportunity.”<sup>91</sup> Mobile service is an important force behind broadband deployment and continued competition, but more spectrum must be provided in order to allow the mobile industry to fulfill its future potential. Wireless spectrum is “the oxygen that allows all of the[] mobile innovations to breathe.”<sup>92</sup> Without plentiful and meaningful access to wireless broadband spectrum, providers simply will not be able to offer robust services to their customers. Limited access to spectrum also diminishes competition. Spectrum-starved wireless providers will be unable to offer competitive, innovative services and new technologies. Smaller carriers will struggle to stay afloat, and risk suffocating from the lack of oxygen.

The Commission can change this. First, the Commission should consider certain innovative spectrum pairings recommended by key industry members. Doing so will identify appropriate spectrum that will assist the Commission in meeting the National Broadband Plan’s goals. Second, the Commission should strive for the newly available spectrum to be assigned and auctioned as soon as possible. Third, and equally important, the Commission must adopt rules and sensible auction policies that will provide smaller carriers with a fair and realistic opportunity to acquire needed spectrum. By doing so, all carriers will have a fair opportunity to acquire the spectrum they so desperately need, and will allow for continued competition within the wireless industry.

#### **B. The Commission Should Consider Certain Proposed Spectrum Pairings**

The Commission must not waiver in its commitment to achieving the spectrum goals set forth in the National Broadband Plan. Specifically, the Commission must take actions that will

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<sup>91</sup> *Chairman Genachowski CTIA Speech.*

<sup>92</sup> *Id.*

allow 500 MHz of spectrum to be allocated for mobile wireless broadband in the next decade, with 300 MHz of spectrum available in the next five years.<sup>93</sup> Identifying, reallocating, and assigning new wireless broadband spectrum must remain the FCC's top priority as it moves forward. There is a critical need for additional spectrum to be allocated and licensed in manageable spectrum block sizes to meet substantial and unsatisfied needs for mobile wireless broadband. This has become even more critical due to the efforts of the largest carriers to acquire additional spectrum via significant transactions and alternative sources of secondary market spectrum dry up.

In order to achieve these goals, MetroPCS recommends that the Commission consider previously offered spectrum pairings by wireless industry participants. As MetroPCS has advocated,<sup>94</sup> Ericsson's proposal regarding the pairing of the 1675-1710 MHz band with the 2075-2110 MHz band (AWS-4) and the pairing of the 1755-1780 MHz band with the 2155-2180 MHz band (AWS-3) should be adopted by the Commission.<sup>95</sup> In addition, as previously recommended by MetroPCS, the Commission should pair the AWS-3 band with the spectrum in the 1755-1780 MHz band, or, if that is unavailable, the AWS-3 band should be paired with the 1675-1710 MHz band.<sup>96</sup> Through the above-listed pairings, the Commission will be supplying the industry with the critical lifeblood it needs to keep its participants alive and to foster competition and increased benefits to consumers.

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<sup>93</sup> See FCC, CONNECTING AMERICA: A NATIONAL BROADBAND PLAN FOR OUR FUTURE, xii (2010).

<sup>94</sup> See MetroPCS Communications, Inc., Ex Parte Notice, in ET Docket No. 10-142; WT Docket Nos. 04-356, 07-195 (filed Sept. 26, 2011); MetroPCS Communications, Inc., Ex Parte Notice, in ET Docket No. 10-142; WT Docket Nos. 04-356, 07-195 (filed Oct. 17, 2011).

<sup>95</sup> Ericsson Ex Parte Notice, in ET Docket No. 10-142, WT Docket Nos. 04-356, 07-195 (filed Sept. 15, 2011).

<sup>96</sup> Comments of MetroPCS Communications, Inc., in WT Docket No. 10-133, 22 (filed Jul. 30, 2010) ("*MetroPCS 15<sup>th</sup> Wireless Competition Report Comments*").

### C. The Commission Must Promote Prompt, Sensible Auction Policies

Once the spectrum has been identified and allocated as mobile wireless broadband spectrum, the Commission must ensure that this spectrum has a reasonable prospect to be fairly distributed through well-crafted, sensible auction policies that – unlike the Auction No. 73 700 MHz auction – are not unduly skewed in favor of the largest nationwide carriers.<sup>97</sup> As discussed above, it is no secret that the large, nationwide carriers play a dominant role in the wireless marketplace. At present, these carriers have more subscribers, more revenue, and more coverage, than the small, rural and mid-tier service providers. But, the Commission should not lock in this market structure by crafting auction rules that favor the dominant largest national providers. Indeed, as MetroPCS recently demonstrated, it sometimes is the smaller carriers, such as MetroPCS, who are the most efficient users of spectrum.<sup>98</sup>

The Commission must promote sensible auction policies that will allow *all* carriers, regardless of size, to participate meaningfully. Spectrum must be licensed in a way that encourages the participation of new entrants as well as small, rural and mid-tier carriers in the resulting spectrum auction. Without such policies, the large carriers will continue to acquire what little spectrum is offered, and further expand the gap between the large carriers and small carriers, diminishing competitive options for consumers.

MetroPCS continues to believe that spectrum should be allocated in 5x5 building blocks, in geographic areas that are no larger than economic areas (“EAs”), with cellular market areas (“CMAs”) or even basic trading areas (“BTAs”) being preferred to encourage competitive

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<sup>97</sup> In the 700 MHz band auction, nearly \$16 billion of the \$19.6 billion worth of licenses sold ended up going to AT&T and Verizon Wireless. *See* Comments of MetroPCS Communications, Inc., in GN Docket Nos. 09-157, 09-51 (filed Sept. 30, 2009).

<sup>98</sup> Petition of MetroPCS Communications, Inc. and NTELOS Inc. to Condition Consent, or Deny Application, in WT Docket No. 11-65, 26 -30 (filed May 31, 2011).



entry.<sup>99</sup> As previously recommended to the Commission, MetroPCS' Broadband Incentive Discount Proposal ("BID proposal") should be implemented.<sup>100</sup> The BID proposal provides bidding credits to qualified applicants that have less spectrum in order to promote a broader dissemination of licenses and improve the prospect of success for new entrants, small, rural and mid-tier carriers.<sup>101</sup> The BID proposal also would have the important incidental benefit of according opportunities to minority-owned, women-owned and small businesses. Even if the Commission chooses not to adopt the BID proposal, MetroPCS urges the Commission to refrain from imposing certain auction rules, such as large license blocks with expansive geographic areas and combinatorial bidding, which favor large, entrenched bidders to the detriment of the competitive carrier.

## VII. CONCLUSION

To promote competition in the wireless industry, the Commission must take a proactive approach and implement policies that encourage, not inhibit, competition. It is clear that due to the uneven playing field in the wireless marketplace, Commission action is necessary so that all wireless providers may have access to critical upstream and downstream inputs. Dominant nationwide carriers control access to data roaming, advanced handsets and adequate backhaul and, as a result, the small, rural and mid-tier carriers are at a constant disadvantage, further separating the divide between the nationwide carriers and the non-nationwide carriers. Absent robust competition from all types of carriers, consumers ultimately will suffer by experiencing higher prices and reduced innovation.

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<sup>99</sup> *MetroPCS 15<sup>th</sup> Wireless Competition Report Comments*, 23 – 24.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

In addition to facilitating fair access to these critical inputs, the Commission also must promote policies resolving issues that further inhibit competition, such as Channel 51 interference and 700 MHz interoperability issues. The Commission also should refrain from imposing unnecessary regulations on wireless providers, particularly small, rural and medium-sized wireless service providers that will constrain competition. Drawing regulatory distinctions between dominant and non-dominant carriers is justified.

Finally, the Commission must secure and fairly distribute additional spectrum in order to promote competition, as well as innovation, in the wireless marketplace. MetroPCS recommends that the Commission strongly consider certain proposed spectrum pairings, such as the pairings presented by Ericsson, as well as implement prompt, sensible auction policies that ensure a fair auction for all types of carriers.

Respectfully submitted,

MetroPCS Communications, Inc.

A handwritten signature in black ink, appearing to read 'Carl W. Northrop', with a stylized flourish at the end.

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